

### § 303.442

### 34 CFR Ch. III (7–1–12 Edition)

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements in paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if—

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to § 303.442; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in § 303.442(a) and the time period to resolve in § 303.442(b) begin again with the filing of the amended due process complaint.

(e) *Lead agency response to a due process complaint.* (1) If the lead agency has not sent a prior written notice under § 303.421 to the parent regarding the subject matter contained in the parent's due process complaint, the lead agency or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

(i) An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IFSP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the lead agency or EIS provider used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the agency's or EIS provider's proposed or refused action.

(2) A response by the lead agency under paragraph (e)(1) of this section does not preclude the lead agency from asserting that the parent's due process

complaint was insufficient, where appropriate.

(f) *Other party response to a due process complaint.* Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2), 1439)

### § 303.442 Resolution process.

(a) *Resolution meeting.* (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under § 303.443, the lead agency must convene a meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint that—

(i) Includes a representative of the lead agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the lead agency unless the parent is accompanied by an attorney.

(2) The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the lead agency has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraphs (a)(1) and (a)(2) of this section need not be held if—

(i) The parent and lead agency agree in writing to waive the meeting; or

(ii) The parent and lead agency agree to use the mediation process described in § 303.431.

(4) The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.

(b) *Resolution period.* (1) If the lead agency has not resolved the due process complaint to the satisfaction of the parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for

issuing a final decision under § 303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (b)(2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the lead agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the lead agency may, at the conclusion of the 30-day period, request that the hearing officer dismiss the parent's due process complaint.

(5) If the lead agency fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) *Adjustments to 30-day resolution period.* The 30- or 45-day timeline adopted by the lead agency under § 303.440(c) for the due process hearing described in § 303.447(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting.

(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible.

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or lead agency withdraws from the mediation process.

(d) *Written settlement agreement.* If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (a)(2) of this section, the parties must execute a legally binding agreement that is—

(1) Signed by both the parent and a representative of the lead agency who

has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the lead agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements pursuant to this section.

(e) *Agreement review period.* If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within three business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B), 1439)

**§ 303.443 Impartial due process hearing.**

(a) *General.* Whenever a due process complaint is received consistent with § 303.440, the parents or the EIS provider involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 303.440 through 303.442.

(b) *Agency responsible for conducting the due process hearing.* The hearing described in paragraph (a) of this section must be conducted by the lead agency directly responsible for the early intervention services of the infant or toddler, as determined under State statute, State regulation, or a written policy of the lead agency.

(c) *Impartial hearing officer.* (1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the lead agency or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in